

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 **In the matter of:**

) DOCKET NO. S-03518A-04-0000
)

9 **GARY GLEN JOHNSON**
6851 West Emile Zola Avenue
10 Peoria, Arizona 85381

) DECISION NO. 67085
)

11 **JOHNSON ESTATE PLANNING**
12 **SERVICE, INC.,**
11024 North 28th Drive, Suite 200
13 Phoenix, Arizona 85029,

) **ORDER TO CEASE AND DESIST,**
) **ORDER OF DISGORGEMENT,**
) **ORDER FOR ADMINISTRATIVE**
) **PENALTIES AND CONSENT TO SAME**
) **BY: GARY G. JOHNSON, JOHNSON**
) **ESTATE PLANNING SERVICE, INC.,**
) **AND JOHNSON ESTATE PLANNING**
) **SERVICE, L.L.P.**
)

14 **JOHNSON ESTATE PLANNING**
15 **SERVICE, L.L.P.,**
11022 North 28th Drive, Suite 250
16 Phoenix, Arizona 85029,

17 Respondents.
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19 Respondents GARY GLEN JOHNSON ("JOHNSON"), JOHNSON ESTATE PLANNING
20 SERVICE, INC., and JOHNSON ESTATE PLANNING SERVICE, L.L.P. elect to permanently
21 waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona,
22 A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order to Cease and Desist, Order of
23 Disgorgement, Order for Administrative Penalties and Consent to Same ("Order"). JOHNSON,
24 JOHNSON ESTATE PLANNING SERVICE, INC., and JOHNSON ESTATE PLANNING
25 SERVICE, L.L.P., collectively "RESPONDENTS," admit the jurisdiction of the Arizona
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Corporation Commission ("Commission"); admit the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

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FINDINGS OF FACT

1. During a period from at least 1995 through 1999, JOHNSON was an owner and operator for JOHNSON ESTATE PLANNING SERVICE, INC., a small financial services company located at 11024 North 28th Drive in Phoenix, Arizona. In this capacity, JOHNSON worked as an estate planner and as an insurance agent licensed with the State of Arizona.

2. In 1998, JOHNSON created and became a partner in JOHNSON ESTATE PLANNING SERVICE, L.L.P., another small financial services firm located in the nearby address of 11022 North 28th Drive in Phoenix, Arizona. In this related capacity, JOHNSON again served as an estate planner and as an insurance agent licensed with the State of Arizona.

3. At no time was JOHNSON ever registered as a securities salesman in the state of Arizona, and at no time were either JOHNSON ESTATE PLANNING SERVICE, INC. or JOHNSON ESTATE PLANNING SERVICE, L.L.P. ever registered as broker/dealers in the state of Arizona.

4. In early 1997, JOHNSON was approached by a recruiter for CapitalPro Asset Management Fund, Inc., ("CapitalPro"), a purported equipment-leasing company based out of Newport Beach, California. This recruiter sought to have JOHNSON work as an agent for CapitalPro by promoting, offering, and selling long-term promissory notes.

5. Soon thereafter, JOHNSON attended a local recruitment seminar sponsored by CapitalPro. During the course of this presentation, held in Scottsdale, Arizona, a representative for CapitalPro discussed the company's economic potential and outlined the specifics of CapitalPro's promissory note program. As part of this presentation, the CapitalPro representative claimed that, for technical reasons, no securities license was required to offer and sell the CapitalPro notes.

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1 6. In connection with these recruitment efforts, the CapitalPro representative also
2 provided JOHNSON with a package of CapitalPro promotional materials and promissory note
3 solicitation forms.

4 7. Some months later, in the spring of 1997, JOHNSON accepted an invitation to inspect
5 the CapitalPro headquarters in Newport Beach, California. During this visit, JOHNSON met with
6 various officers of CapitalPro and was given a tour of the company's facilities. Also at this time,
7 CapitalPro attorneys reiterated that no securities license was necessary to offer and sell CapitalPro
8 promissory notes. JOHNSON left CapitalPro under the impression that the company was a
9 legitimate equipment-leasing business and that he was legally authorized to offer and sell these notes.

10 8. Shortly thereafter, in July 1997, JOHNSON began offering and selling through the
11 offices of JOHNSON ESTATE PLANNING SERVICE, INC. and later JOHNSON ESTATE
12 PLANNING SERVICE, L.L.P., CapitalPro promissory notes to both existing clients and other
13 individuals brought in through general solicitations.

14 ***The CapitalPro Promissory Note Program***

15 9. As described in the company's "offering" materials, the CapitalPro promissory note
16 program presented investors with the choice of selecting promissory notes with various maturity dates
17 and with various annual rates of return. The notes ranged from 12 to 60 month in maturity, and
18 offered varying interest rates ranging from 8% to 12.6% per annum, depending on the maturity date of
19 the note.

20 10. According to CapitalPro literature, the proceeds from the sale of these long-term notes
21 were to be designated solely for equipment lease financing. The investors' CapitalPro notes were also
22 allegedly secured by a separate, adequately funded cash collateral account.

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1 11. Per the CapitalPro offering memorandum, the minimum investment amount allowed
2 in connection with the CapitalPro promissory note program was \$10,000. CapitalPro, through its
3 sales agents, originally set out to raise \$5 million in investment capital through this promissory note
4 offering.¹

5 12. CapitalPro investors received annual rates of return on their notes for a period of
6 roughly three to four years. In May 2001, however, the interest payments ceased and, shortly
7 thereafter, CapitalPro notified investors that it had declared bankruptcy.

8 13. A filing made by the trustee of the CapitalPro notes during the subsequent bankruptcy
9 proceeding alleged that the officers and directors of CapitalPro had in fact grossly mismanaged the
10 sale of CapitalPro promissory notes and had misappropriated the resulting funds for, *inter alia*,
11 improper compensation, gifts and loans. The trustee also declared that the note sale proceeds had
12 systematically been exhausted.

13 14. The bankruptcy proceedings resulted in the liquidation of all remaining assets, and the
14 Capital Pro (and CapitalPro II) note-holders were ultimately reimbursed 1 percent of their original
15 investment principal. To date, CapitalPro investors have not received any further distributions.

16 ***JOHNSON's involvement in the CapitalPro note program***

17 15. Based on a review of CapitalPro's promotional literature, and after attending the
18 CapitalPro recruitment seminar and visiting to the company's corporate headquarters, JOHNSON
19 agreed to serve as a sales agent for the CapitalPro promissory note program. Over the next 14
20 months, from July 1997 through August 1998, JOHNSON directly or indirectly engaged in the
21 offer and sale of over a hundred CapitalPro promissory notes to Arizona investors.

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23 ¹ In 1998, CapitalPro began promoting and offering a second issue of promissory notes,
24 technically referred to as the "CapitalPro Asset Management Fund II, Inc." notes. For all intents and
25 purposes, these long-term promissory notes were nothing more than an extension of the original
26 CapitalPro promissory notes offering from 1997. The single practical effect of this second issue of
notes was to enable CapitalPro to generate another \$10 million in investment capital.
RESPONDENTS sold both the original CapitalPro notes and the subsequent CapitalPro II notes to
Arizona investors.

1 16. In connection with these sales, JOHNSON indicated to prospective investors that
2 the CapitalPro promissory notes could provide far better yields than other portfolio options such as
3 annuities, and that the liquidation of current savings and/or retirement accounts in favor of the
4 CapitalPro notes could be a prudent financial decision.

5 17. Consistent with CapitalPro literature, JOHNSON told prospective investors that
6 these CapitalPro promissory notes were a safe investment option. In so doing, JOHNSON failed to
7 articulate material risks associated with the CapitalPro note program.

8 18. In fact, investments in the CapitalPro promissory notes presented a number of
9 inherent risks. These risks included, without limitation, the fact that this start-up equipment-
10 leasing company could fail and/or declare bankruptcy without a sufficiently funded collateral
11 account, thereby jeopardizing the investors' entire principal.

12 19. From approximately July 1997 through August 1998, JOHNSON played a direct or
13 indirect role in the offer and/or sale of at least 115 CapitalPro promissory notes to at least 83
14 known investors. The principal amount of these promissory note investments totaled
15 approximately \$3.5 million.

16 20. In connection with these sales of CapitalPro promissory notes, RESPONDENTS
17 directly or indirectly received approximately \$398,000 in sales commissions, incentives and
18 bonuses. Of this amount, JOHNSON retained profits of at least \$164,000.

19 21. In 2001, following initial indications of CapitalPro's insolvency, JOHNSON retained
20 counsel to pursue the purported cash collateral funds securing the investments of the CapitalPro note-
21 holders. Despite repeated efforts to access the cash collateral fund and other existing CapitalPro
22 assets, RESPONDENTS were ultimately unsuccessful in recovering any of their clients' investment
23 funds.

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22. RESPONDENTS gave up on their attempts at securing any CapitalPro recovery for their clients in August 2002; JOHNSON ESTATE PLANNING SERVICE, INC. and JOHNSON ESTATE PLANNING SERVICE, L.L.P. ceased business operations a short time later.

23. The following year, in 2003, a civil action was initiated in Maricopa County Superior Court by a number of RESPONDENTS' CapitalPro investors. In this lawsuit, known as the "Bielert" litigation, plaintiffs levied multiple claims of misconduct against JOHNSON and an associate in connection with RESPONDENTS' sale of CapitalPro promissory notes. This civil action is being pursued concurrently with the present administrative action.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. RESPONDENTS offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.

5. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

6. RESPONDENTS' conduct is grounds for an order of disgorgement pursuant to A.R.S. § 44-2032.

7. RESPONDENTS' conduct is grounds for administrative penalties pursuant to A.R.S. § 44-2036.

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III.**ORDER**

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3 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and
4 RESPONDENTS' consent to the entry of this Order, the Commission finds that the following
5 relief is appropriate, in the public interest, and necessary for the protection of investors:

6 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, and any of
7 RESPONDENTS' agents, employees, successors and assigns, permanently cease and desist from
8 violating the Securities Act.

9 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall,
10 jointly and severally, disgorge all sales commission profits earned in connection with their
11 activities in this matter; as reflected in the records of the Commission, such disgorgement shall be
12 in the amount of \$164,000. Payment shall be made in installments as follows: \$15,000 on the date
13 of this Order; \$1,000 per month on or before the 1st day of each month beginning on August 1,
14 2004. Any installment payments that become outstanding shall accrue interest at the rate of 10%
15 per annum from the installment payment due date until paid in full. Payment shall be made by
16 cashier's check or money order payable to the "State of Arizona" to be placed in an interest-
17 bearing account maintained and controlled by the Arizona Attorney General. The Arizona
18 Attorney General shall disburse the funds on a pro rata basis to all known investors in
19 RESPONDENTS' CapitalPro note offering who currently retain at least one unsatisfied
20 promissory note. Any funds that the Attorney General is unable to disburse shall revert to the state
21 of Arizona. If RESPONDENTS do not comply with the terms and conditions of this
22 disgorgement, any outstanding balance may be deemed in default and, in such case, shall become
23 immediately due and payable; disgorgement amounts deemed in default shall accrue interest at the
24 rate of 10% per annum until paid in full.

25 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall,
26 jointly and severally, pay an administrative penalty in the amount of \$12,500. Payment shall be

1 made by cashier's check or money order, payable to the "State of Arizona." Payment of this sum
2 shall become due and payable only after disgorgement payments as set forth above have been paid
3 in full or, alternatively, if RESPONDENTS have defaulted prior to fulfilling their disgorgement
4 obligations. Satisfaction of this administrative penalty may be made in one payment or through
5 monthly installment payments in accordance with the terms and conditions for the monthly
6 disgorgement payments as set forth above.

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If RESPONDENTS do not comply with the terms and conditions of this administrative penalty, any outstanding balance shall be deemed in default and shall become immediately due and payable; all outstanding administrative penalty amounts that are due and payable shall accrue interest at the rate of 10% per annum until paid in full.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

/s/ Marc Spitzer

CHAIRMAN

William Mundell

COMMISSIONER

Jeffrey Hatch-Miller

COMMISSIONER

Lowell Gleason

COMMISSIONER

Kristin Mayes

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
Executive Secretary of the Arizona Corporation
Commission, have hereunto set my hand and caused the
official seal of the Commission to be affixed at the
Capitol, in the City of Phoenix, this 29th day of
June, 2004.

/s/ Brian C. McNeil

BRIAN C. McNEIL

Executive Secretary

DISSENT

DISSENT

This document is available in alternative formats by contacting Yvonne McFarlin, Executive Assistant to the Executive Secretary, telephone number (602) 542-3931, E-mail address YMcFarlin@cc.state.az.us.

(JBP)

1. JOHNSON admits the jurisdiction of the Commission over the subject matter of this proceeding. JOHNSON acknowledges that he has been fully advised of his right to a hearing to present evidence and call witnesses and JOHNSON knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. JOHNSON acknowledges that this Order to Cease and Desist, Order of Disgorgement, Order for Administrative Penalties and Consent to Same (“Order”) constitutes a valid final order of the Commission.

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1 instituting other administrative proceedings based on violations that are not addressed by this
2 Order.

3 8. JOHNSON understands that this Order does not preclude the Commission from
4 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
5 that may be related to the matters addressed by this Order.

6 9. JOHNSON understands that this Order does not preclude any other agency or
7 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
8 proceedings that may be related to matters addressed by this Order.

9 10. JOHNSON agrees that he will not apply to the state of Arizona for registration
10 under the Securities Act of Arizona or under the Arizona Investment Management Act for at least
11 five years from the entry date of this Order *and* until such time as all he has complied with all
12 terms and conditions of this Order, including the payment in full of all disgorgement amounts and
13 administrative penalties promulgated under this Order.

14 11. JOHNSON agrees that he will not exercise any control over any entity that offers
15 or sells securities or provides investment advisory services, within or from Arizona, until such
16 time that he has a) complied with all terms and conditions promulgated under this Order, and b)
17 obtained the legal authority to do so.

18 12. JOHNSON agrees that until disgorgement and penalties are paid in full,
19 JOHNSON will notify the Director of the Securities Division within 30 days of any change in
20 home address or any change in JOHNSON's ability to pay amounts due under this Order.

21 13. JOHNSON understands that a default shall render him liable to the Commission
22 for its costs of collection and interest at the maximum legal rate.

23 14. JOHNSON understands and agrees that he shall cooperate fully with the Securities
24 Division by, without limitation, providing information pertinent to any related investigation and,
25 if necessary, presenting complete and accurate testimony at any related hearing. JOHNSON
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1 agrees that he shall similarly cooperate with any other agency of the state of Arizona in any
2 investigation or in any other matter arising from the activities described in this Order.

3 15. JOHNSON consents to the entry of this Order and agrees to be fully bound by its
4 terms and conditions. *If JOHNSON breaches any provision of this Order, the Commission may*
5 *vacate this Order and restore this case to its active docket.*

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8 Agreed: /s/ Gary G. Johnson
9 GARY G. JOHNSON

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12 SUBSCRIBED AND SWORN TO before me, by GARY G. JOHNSON, this 9th day of
13 June, 2004.

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16 /s/ Kelly Naughton
17 NOTARY PUBLIC

18 My Commission Expires:

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21 10/14/06

CONSENT TO ENTRY OF ORDER

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2 1. JOHNSON ESTATE PLANNING SERVICE, INC. and JOHNSON ESTATE
3 PLANNING SERVICE, L.L.P. (collectively, "JEPS") admit the jurisdiction of the Commission
4 over the subject matter of this proceeding. JEPS acknowledge that they have been fully advised
5 of their right to a hearing to present evidence and call witnesses and JEPS knowingly and
6 voluntarily waive any and all rights to a hearing before the Commission and all other rights
7 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
8 Administrative Code. JEPS acknowledge that this Order to Cease and Desist, Order of
9 Disgorgement, Order for Administrative Penalties and Consent to Same ("Order") constitutes a
10 valid final order of the Commission.

11 2. JEPS knowingly and voluntarily waive any right under Article 12 of the Securities
12 Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from
13 the entry of this Order.

14 3. JEPS acknowledge and agree that this Order is entered into freely and voluntarily
15 and that no promise was made or coercion used to induce such entry.

16 4. JEPS acknowledge that they have been advised by counsel in this matter and that
17 they have reviewed this Order with an attorney and understand all terms contained therein.

18 5. JEPS admit the Findings of Fact and Conclusions of Law contained in this Order.

19 6. By consenting to the entry of this Order, JEPS agree not to take any action or to
20 make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
21 Fact or Conclusion of Law contained in this Order, or to create the impression that this Order is
22 without factual basis. JEPS will undertake steps necessary to assure that all of its agents and
23 employees understand and comply with this agreement.

24 7. While this Order settles this administrative matter between JEPS and the
25 Commission, JEPS understand that this Order does not preclude the Commission from instituting
26 other administrative proceedings based on violations that are not addressed by this Order.

1 8. JEPS understand that this Order does not preclude the Commission from referring
2 this matter to any governmental agency for administrative, civil, or criminal proceedings that may
3 be related to the matters addressed by this Order.

4 9. JEPS understand that this Order does not preclude any other agency or officer of
5 the state of Arizona or its subdivisions from instituting administrative, civil or criminal
6 proceedings that may be related to matters addressed by this Order.

7 10. JEPS agree that they will not apply to the state of Arizona for registration under
8 the Securities Act of Arizona or under the Arizona Investment Management Act for at least five
9 years from the entry date of this Order *and* until such time that they have complied with all terms
10 and conditions of this Order, including the payment in full of all disgorgement amounts and
11 administrative penalties promulgated under this Order.

12 11. JEPS agree that they will not exercise any control over any entity that offers or
13 sells securities or provides investment advisory services, within or from Arizona, until such time
14 that they have a) complied with all terms and conditions promulgated under this Order, and b)
15 obtained the legal authority to do so.

16 12. JEPS agrees that until disgorgement and penalties are paid in full, JEPS will notify
17 the Director of the Securities Division within 30 days of any change in business address or any
18 change in JEPS' ability to pay amounts due under this Order.

19 13. JEPS understands that a default shall render them liable to the Commission for its
20 costs of collection and interest at the maximum legal rate.

21 14. JEPS understands and agrees that they shall cooperate fully with the Securities
22 Division by, without limitation, providing information pertinent to any related investigation or
23 related hearing. JEPS agrees that they shall similarly cooperate with any other agency of the state
24 of Arizona in any investigation or in any other matter arising from the activities described in this
25 Order.

26 ...

